

NEEDHAM PLANNING BOARD MINUTES

January 5, 2010

The regular meeting of the Planning Board held in Selectmen's Meeting Room at Town Hall, was called to order by Jeanne McKnight, Chairman, on Tuesday, January 5, 2010 at 7:30 p.m. with Messrs. Warner, Ruth and Jacobs as well as Planning Director, Ms. Newman and Recording Secretary, Ms. Kalinowski.

Public Hearings

7:30 p.m. – Amendment to Major Project Site Plan Review No. 2009-01: Restaurant Pomodoro, Inc., 1019 Great Plain Avenue, Needham, Massachusetts, Petitioner (Property located at 1019 Great Plain Avenue, Needham, MA).

George Giunta Jr., representative for the applicant, noted this was approved by the Board in April for a full service, 100-seat dine in restaurant with no take-out. Customers are requesting a take-out and they would like to provide it. There will be no exterior changes or substantive change to the interior. They will need an additional parking waiver, a Special Permit for take-out and further site plan review. The take-out station will be in the back by the rear door with signage. People will park in the back. Ms. Newman noted Stone Hearth has the same condition. Mr. Jacobs asked where the signage would be and was informed probably at the take-out station and in front by the bar area. Mr. Jacobs asked if it would be easier to put one on the front glass so people see it from the street rather than park and see it once they park and go in. It may help to solve the problem. Mr. Warner noted it was a no parking zone in front of it. Mr. Giunta Jr. noted the staff will be trained to watch for parking. Ms. McKnight asked if they had a website and was informed they do. Ms. McKnight noted they could direct people on their website. She noted the entrance to the parking area is a long distance away. She asked how many spaces they had for themselves and was informed 2. She asked when the restaurant opens. It opens at 5:00 p.m. and take-out will be mostly between 5:00 p.m. and 8:00 p.m. Ms. Newman commented they have been able to manage a take-out function at this location. Mr. Ruth noted that most customers doing take-out are return visits. Ms. McKnight asked if there has been a recent parking study. There has not been one done recently. Mr. Jacobs noted a decision has been drafted. Ms. Newman reviewed the changed in the draft decision. She noted they should add a sign as to where customers should pick up their orders.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to close the hearing.

Ms. McKnight noted in Section 2.3, she feels they should add Section D, that on any written information such as a menu or website this information shall be added. Mr. Jacobs asked if they want to change it to add a sign in the front window. Mr. Ruth noted he prefers Section 2.4 as is and that they applicant would make reasonable efforts. The aesthetics of the front are nice and he is concerned with signs being put up.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to grant (1) the requested Amendment to Major Project Site Plan Special Permit Under Section 7.4 of the Needham Zoning By-Law and Section 4.2 of Major Project Special Permit No. 2009-01, dated April 15, 2009; (2) a Special Permit under Section 3.2.2 of the By-Law for a take-out operation accessory to a restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter in the Center Business District; and, (3) a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking).

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to adopt the draft decision as drafted by the Planning Director with the exception of an internet notice to be put in.

Review of Burr Drive Bond and Subdivision Completion Status.

Ms. Newman noted she has asked for an update on the bond. This has been going on a long time and she wants to have the Town Engineer go out and give an updated on the estimate. They are currently holding \$57,000 for off-street. She noted the engineer has not been able to do a detailed inspection due to snow but they should update the bond and bring them in to talk about finishing in the spring.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the four members present unanimously:
VOTED: to ask the developer to come in and increase the bond.

Review of Dedham's Request for Waiver on Zoning Amendment Notice under Chapter 40A, Section 5.

Ms. McKnight recused herself. Mr. Ruth took over the hearing as Vice-Chairman. Mr. Jacobs asked if this was Legacy Place and was informed it was. Mr. Jacobs commented it was not on the border of Needham. Mr. Ruth noted by statute they were supposed to notify the town. There is a proviso if Needham waives the notice after the fact it could proceed.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Warner, it was by the three members present unanimously:
VOTED: to waive the notice under 40A, Section 5.

Ms. McKnight returned to the meeting.

8:00 p.m. – Amendment to Major Project Site Plan Special Permit No. 2003-02: Muddy River Properties, LLC, 22 Comeau Street, Wellesley, MA 02481, Petitioner (Property located at 322 Reservoir Street, Needham, MA).

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the four members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Roy Cramer, representative for the applicant, noted he has met informally with them before. He explained this is the subject of 3 Special Permits – 2003, 2006 and 2009 – and he described the permits. He noted Scott Ravelson bought the building. Kathy McCrohan's dance studio is on the second floor and the first floor is empty. The Board wanted them to file an application and get an amendment. They prepared a draft decision and sent it to all and the redraft of the decision just came out. The purpose of the decision was to get a lot cleared up and get relief. There are 22 spaces on the lot and a total waiver of 26. The requirement is 48, which was originally based on NE Silks. They can put in prospective tenants for as of right uses as long as the total does not exceed 46. They would not put in high intensity uses spelled out in the 2003 decision but if they would like to move the dance studio they would like to be able to. They were permitted recently for karate. If they find another one they would like to be allowed to put it in. They did not ask for all private schools but dance/martial arts schools. They have prospective tenants that are neuro muscular massage therapists. There would be no more than 4 clinicians, by appointment only, with 15 minutes between appointments. They will need 8 spaces. Section 3.2.2.1 – Industrial District – states craft, consumer, etc. as a matter of right. This is the most benign use you can have and by appointment only. Ms. Newman stated she thinks this is more of a medical office use rather than trainer. They should put it under medical office and carve out an exception. If it is a regular office use it is 1/300 square feet. A medical office use is 1/200 square feet. Mr. Cramer stated he does not feel it is a medical use. He wants the Board to agree it is a use as a matter of right and not an exclusion of high intensity. They should say if the use goes into the building and continues in the building with the restrictions stated they get to use the number 8.

Mr. Ruth noted he is anxious about the massage component and would like to be reassured it is professional. He thinks there is room to come to a yes on this. Therapy suggests to him treatment and sounds medical. He does not feel it would create a large parking demand. Mr. Jacobs noted he is not sure they need to define it as a medical use. They could say "akin to medical use" and leave it at that. Mr. Ruth noted activities pursuant to people being seen. Ms. Newman noted they need to say medical but exclude it under the 2003 permit. Mr. Cramer reiterated this is different from medical offices. Mr. Jacobs stated they could say "assuming medical use without finding so...." Mr. Cramer noted they accepted the number 46 spaces. Mr. Warner noted the page 5 exclusion. Mr. Jacobs noted page 6, Section 1.10 (d). Mr. Ruth noted Section 1.22, last sentence, add "said use to the extent it could be considered." Mr. Cramer noted notwithstanding anything in the foregoing; the parking number for this massage use will be 8...

Ms. Newman stated they need the intent of the parties. Mr. Cramer questioned 1.23. Ms. Newman stated the Board needs to decide if they want to hear from people when there are changes. She noted they could do what they have done with the Level 3 building – come back each time there is a new tenant. Ms. McKnight commented it seemed Section 1.23 is asking for an evaluation and noted if they dispense with that it may resolve it. Mr. Cramer stated as long as it does not exceed 46 spaces and he notifies them, he should be able to not have to come back. Due to the hearing running very late it was requested they continue the hearing to later in the meeting.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to continue the hearing to the end of the agenda.

8:30 p.m. – Amendment to Major Project Site Plan Review No. 2004-01: Needham High School, Town of Needham, 470 Dedham Avenue, Needham, MA, Petitioner (Property located at 609 Webster Street, Needham, MA).

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Steve Popper, representative for the applicant, noted he was satisfied with the draft decision.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to close the hearing.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to grant relief in the form of the amendment as presented.

Request for Temporary Occupancy Permit: Major Project Site Plan Review No. 2008-09: Town of Needham Permanent Public Buildings Committee, Petitioner (Property located at 500 Dedham Avenue, Needham, MA).

Ms. Newman noted they are requesting a temporary Certificate of Occupancy through July. She has received the As-built site plan. She has reviewed it and approved. She has also received certification from the land architect and civil engineer. There is some landscaping to be completed. She noted the engineering department has recommended the holding back of \$27,431. Ms. McKnight asked if the letter from Winter Street Architects with discrepancies raises any concerns with regard to the permit. Mr. Popper asked if the PBC were to write a letter saying they have enough funds to cover would that be sufficient. Ms. Newman stated on a private project the town would require a bond. She wants to be sure. The Building Committee has provided a letter there are sufficient funds.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to authorize a temporary Certificate of Occupancy through July 31, 2010 subject to receipt of a further letter from the PBC that there are sufficient funds to cover.

Mr. Popper asked if the verbal request be processed as soon as possible.

Deminimus Change: Major Project Site Plan Review No. 2008-07: Needham Bank, Needham, MA, Petitioner (Property located at 10 Eaton Square, 1055 and 1063 Great Plain Avenue, Needham, MA).

Peter Zahka, attorney for the applicant, noted they propose to make a rear entrance with an archway to be aesthetically pleasing and help the public find the entrance. The Design Review Board has approved. Mr. Jacobs commented he liked the design. Mr. Warner noted the stone work was very nice.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to grant the relief requested and grant it in the form of the decision presented at the meeting.

Decision: Major Project Site Plan Review No. 2009-07: Treat LLC, d/b/a Treat Cupcake Bar, 45 Stonecrest Drive, Needham, MA 02492, Petitioner (Property located at 1450 Highland Avenue, Needham, MA).

Ms. Newman noted she has prepared a draft decision after direction from the Planning Board. Mr. Cramer, representative for the applicant, reviewed the draft and has some comments. On page 1, Section 4 and in 1.4 he would like uses to include the sale of items with logo. This was agreed. In 1.6, change "represents" to "anticipates". This was fine. He feels 3.5 is too broad. It should be deleted or limited. They are a tenant and have no control over that. There is no real problem keeping it in but he was surprised to see it. Ms. McKnight stated they should delete the phrase "from parking illegally on Highland Avenue or." This was agreed. Mr. Cramer noted in 3.10 this is the landlord responsibility. There is no way of enforcing that. Ms. Newman agreed that 3.10 can go out and 3.14 the second sentence goes out. She clarified there is no parking with the building. Mr. Cramer noted in 1.6 and 3.1 – with this use they do not know what is primary and what is accessory. Things change and if the uses change they are in violation of the permit. He thought the language would be written in such a way that they did not have to worry. He suggested at the end of 1.6, they add "notwithstanding the Board finds it shall not be considered a violation if eat-in eclipses take-out use." They hope eat-in will be primary but you never know. They should make a finding it is food retail and not a take-out establishment or say it is not a violation. Mr. Jacobs asked where it would go in the use table. Mr. Cramer noted retail establishment. They could say retail establishment and grant take-out. Or retail with accessory that includes other incidental uses. He added there are 3 components to food retail: primary bakery, eat-in as part of primary bakery and take-out. Mr. Ruth noted incidental to retail food is consumption of goods on the premises at seats. A separate accessory use is take-out consumption of the same goods.

Ms. McKnight noted in 3.1, they should delete "for preparation and consumption off the premises" and delete "subordinate and" and add after a counter for eat-in or take-out. Mr. Cramer noted they should add somewhere "notwithstanding it shall not be a violation if one use eclipses the other." Ms. Newman stated that says they have no zoning. Mr. Jacobs commented they should delete the next to last sentence as that is the one that will give them problems. Mr. Ruth agreed as did Mr. Warner. Ms. McKnight stated they all agree that "for preparation and consumption off the premises" should be deleted. Ms. Newman stated she would prefer they delete only "preparation and". Mr. Warner noted he could go either way and Mr. Ruth agreed. Mr. Jacobs stated he understands Ms. Newman does not want to lose clarity and he is leaning toward her view. It was agreed they will take out "preparation and" only. They will add after the word "above" "a counter for eat-in and/or take-out and."

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to grant the relief requested in the form of the decision presented at the meeting with the changes discussed in 1.6, 3.1, 3.5, 3.10 and 3.14.

Update on Final Parking Report funded under DHCD Downtown Initiative including supplemental in lieu parking assessment fee.

Ms. Newman noted she is trying to get Jason to work with her to close this so they can have a recommendation.

8:00 p.m. – Amendment to Major Project Site Plan Special Permit No. 2003-02: Muddy River Properties, LLC, 22 Comeau Street, Wellesley, MA 02481, Petitioner (Property located at 322 Reservoir Street, Needham, MA).
– (Continued from earlier in the meeting)

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to open the continued hearing.

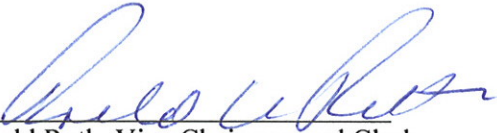
Ms. McKnight noted 1.23 only deal with certain kinds of schools. Mr. Cramer stated 1.23 and 1.24, as long as the private schools are dance or martial arts they do not need further review provided parking does not exceed 46 with notice. Mr. Jacobs asked when they would get their notice. Mr. Cramer noted when they sign an agreement with a new tenant prior to occupancy. Mr. Ruth stated they should add "as the extent use has a different peak it does not have these protections." Mr. Jacobs asked if they could add a clause that "this decision shall apply to any uses of the building whether there is a Certificate of Occupancy in their name or pulled a permit." Mr. Cramer stated the notice will be from the landlord not the tenant. That is fine. Ms. Newman noted they should have notices for all tenants in this building so they know they are at 46. The condition section needs to be rewritten. Mr. Cramer noted in 3.1, they asked if there were changes to windows/doors they do not have to go back as long as they get approval. Ms. Newman said doors are an issue. He noted 3.1 is ok the way it is. In 3.2, he would rather 2003 not be incorporated in but they pick and choose the applicable paragraphs. Ms. Newman is fine with that. In 3.3 and 3.4, they should make the same changes about notice not hearing and put in "the number 46 changes so massage therapist's use 8." Mr. Cramer

suggested they keep the hearing open. Ms. Newman will re-draft tomorrow and put on the agenda for next week. George Giunta Jr., representative for David Tocci, noted Mr. Tocci owns 2 properties next door. He has no objection but a concern. He has had issues with the dance studio parking on his property. He wants to prohibit unauthorized parking on abutting property. Ms. McKnight stated they will add that provision.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Ruth, it was by the four members present unanimously:
VOTED: to continue the hearing to January 13 at 6:30 p.m.

Upon a motion made by Mr. Ruth, and seconded by Mr. Jacobs, it was by the four members present unanimously:
VOTED: to adjourn the meeting at 10:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker



Ronald Ruth, Vice-Chairman and Clerk